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SEP 30 2005

Federal Communications Commission
Office of the Secretary

September 30, 2005

BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the
Communications Act of 1934, as amended, for Forbearance from Sections
251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area - Supplement

Dear Ms. Dortch:

Enclosed on behalf of ACS of Anchorage, Inc. are an original and nine (9) copies of a revised version of Exhibit A to ACS of Anchorage, Inc.'s Petition for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area Pursuant to Section 10 of the Communications Act of 1934, as amended. The attached Statement of Thomas R. Meade should replace and supercede the version in the original filing.

Please stamp and return to me the additional copy provided for that purpose. If you have any questions regarding this matter, please contact me at (202) 637-1056.

Respectfully submitted,



Elizabeth Park

Enclosures

cc: Michelle Carey
Russell Hanser
Jessica Rosenworcel
Scott Bergmann

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Petition of ACS of Anchorage, Inc. Pursuant to)	
Section 10 of the Communications Act of 1934, as)	WC Docket No. _____
amended, for Forbearance from Sections 251(c)(3))	
and 252(d)(1) in the Anchorage LEC Study Area)	
)	

STATEMENT OF THOMAS R. MEADE

1. I am currently the Vice-President for Carrier Markets and Economic Analysis for Alaska Communications Systems, including ACS of Anchorage, Inc. ("ACS"). I have held this position since January 2004, where among other things I supervise the negotiation and implementation of carrier to carrier agreements. I was previously Vice-President for Revenue Requirements where my areas of responsibility included rate of return, competitive, and other financial and regulatory analysis. I have worked for ACS since 1999.
2. Familiarity with other carriers and competitors in the Anchorage market is required for me to fulfill the duties of my position at ACS. The purpose of this declaration is to demonstrate that there is substantial competition in the Anchorage local exchange carrier ("LEC") study area. ACS of Anchorage, Inc. faces significant facilities-based retail competition in the Anchorage LEC study area. Nearly all customers, business and residential, in Anchorage have a choice of facilities-based carriers.
3. The Anchorage LEC study area consists of Anchorage and a few small Turnagain Arm communities. General Communications, Inc. ("GCI") and AT&T Alascom offer

competitive service throughout the Anchorage study area. Further, the Anchorage study area is subject to uniform retail rates.

4. ACS faces significant competition in Anchorage from competitive LECs ("CLECs"), including GCI and AT&T Alascom. ACS has current interconnection agreements in Anchorage with AT&T Alascom, GCI, and TelAlaska. ACS also has current interconnection agreements with wireless providers ACS Wireless and Dobson Cellular. If ACS were to raise rates or restrict output, other facilities-based and resale competitors in the market have the ability and capacity to serve any customers seeking lower rates.
5. As of June 30, 2005, in the Anchorage LEC study area, ACS estimates that there were approximately 182,000 total access lines; of this amount, ACS had 88,000 retail access lines. ACS believes that approximately 57 percent of its lines serve business customers and approximately 43 percent of its lines serve residential customers. According to GCI, its local exchange customer base is about 60 percent residential.
6. GCI is ACS's largest competitor in Anchorage. GCI entered the local services market in Anchorage in 1997, and is the largest broadband provider in Alaska. GCI also is one of the two major long-distance carriers in the state (along with AT&T Alascom), and currently controls more than 40 percent of the long-distance market. GCI owns two of the three major undersea cables that link Alaska to the continental United States and has extensive fiber and satellite facilities throughout the state of Alaska.
7. GCI also owns a cable network that reaches 90 percent of all households in Alaska. GCI provides cable telephony over a circuit-switched network, using a class 5 switch.
8. From the date of entry of its competitors into the Anchorage market in 1997, ACS's retail market share has fallen from 100% to less than 50% today. Over the last five years, ACS

has had an average annual line loss rate of approximately 8 percent per year. The Wireline Competition Bureau's calculation of overall ILEC market share loss through June 2004 was 17.8%.¹ ACS lost approximately 52% of its market share during the same time period.

9. By ACS's estimates for June 2005, competitors in Anchorage provide service through the following means: approximately 11,000 lines are provisioned via resale under Section 251(c)(4), 51,000 are provisioned using UNE loops, and 32,000 are provisioned entirely over a competitor's facilities or multiplexed by a competitor over ACS UNE loops. GCI is the only CLEC that orders UNE loops from ACS.
10. By ACS's estimates, GCI serves approximately 49 percent of the local exchange market in the Anchorage study area today.
11. GCI has demonstrated its ability to accommodate any customer who wishes to switch local service from ACS to GCI. In fact GCI has been able to transition as many as 525 customers from ACS to GCI in a single day.
12. ACS has estimated the number of GCI's retail lines in Anchorage based on Carrier and Area Specific Bulk Bill ("CASBB") data reported by GCI to the RCA for intrastate access purposes. The CASBB report provides the total number of facilities-based lines served by GCI in Anchorage. Of these lines, ACS knows the number of UNE loops used by GCI, and subtracts this number from the total number of lines GCI reports to the RCA, in order to calculate the total lines that GCI provisions on its own facilities or derives by multiplexing ACS UNE loops. Multiplexing may allow GCI to report to the

¹ FCC Report *Local Telephone Competition: Status of June 30, 2004, Industry Analysis and Technology Division, Wireline Competition Bureau, December 2004, Page 1*

RCA multiple GCI lines that are served over a lower number of ACS UNE loops, however, ACS has no way to estimate the quantity of such lines.

13. GCI has publicly represented that as of the end of the second quarter of 2005, it has moved about 12,800 lines off of UNEs and on to its cable telephony platform. GCI further represented that by the end of 2005, it will be serving approximately 25,000 lines over its cable telephony platform.
14. As of June 2005 in Anchorage, ACS estimates that GCI was serving approximately 89,000 lines out of 182,000 lines in Anchorage, which includes approximately 51,000 UNE loop lines (leased from ACS), and 6,000 wholesale access lines. ACS estimates that GCI also serves an additional 32,000 lines over its own fiber, cable facilities, and multiplexing of ACS loops. ACS estimates that GCI served approximately 19,000 lines entirely over its own facilities, or by multiplexing ACS loops, even before GCI deployed its cable telephony service.
15. GCI primarily relies on its own switches and transport and, to my knowledge, has never ordered a switching UNE from ACS. As of June 2005, GCI's use of UNE loops has decreased by 17 percent since January 2004 while their retail market share has increased. In January 2004, ACS estimated that GCI served 62,000 lines over ACS's UNE loops, 7,000 via resale, and 19,000 entirely over its own facilities or by multiplexing ACS loops. As of June 2005, GCI served approximately 51,000 lines over ACS's UNE loops, 6,000 via resale, and 32,000 over its own facilities or by multiplexing ACS loops. GCI has forecast that it can move approximately 6,000 lines per quarter off ACS's loops to its own plant.

16. ACS has incentives to negotiate with GCI for access to ACS's UNEs at market-based rates in Anchorage in order to maintain the revenue stream ACS currently has from leasing its network. In April 2004, GCI and ACS successfully negotiated new UNE rates and an interconnection agreement for the Fairbanks and Juneau markets. In addition, ACS would like to negotiate for reciprocal rights on GCI's network.

Respectfully submitted,



Thomas R. Meade
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Communications Act of 1934, as amended, for Forbearance from Sections
251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area

Dear Ms. Dortch:

Enclosed on behalf of ACS of Anchorage, Inc. are an original and nine (9) copies of ACS of Anchorage, Inc.'s Petition for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area Pursuant to Section 10 of the Communications Act of 1934, as amended.

Please stamp and return to me the additional copy provided for that purpose. If you have any questions regarding this matter, please contact me at (202) 637-1056.

Respectfully submitted,



Elizabeth Park

Enclosures

cc: Michelle Carey
Russell Hanser
Jessica Rosenworcel
Scott Bergmann

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Petition of ACS of Anchorage, Inc. Pursuant to)
Section 10 of the Communications Act of 1934, as)
amended, for Forbearance from Sections 251(c)(3))
and 252(d)(1) in the Anchorage LEC Study Area)

WC Docket No. _____

**PETITION OF ACS OF ANCHORAGE, INC.
FOR FORBEARANCE FROM SECTIONS 251(C)(3) AND 252(D)(1)**

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September 30, 2005

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Petition of ACS of Anchorage, Inc. Pursuant to)
Section 10 of the Communications Act of 1934, as)
amended, for Forbearance from Sections 251(c)(3))
and 252(d)(1) in the Anchorage LEC Study Area)
)

**PETITION OF ACS OF ANCHORAGE, INC.
FOR FORBEARANCE FROM SECTIONS 251(C)(3) AND 252(D)(1)**

ACS of Anchorage, Inc. ("ACS"), by its attorneys, hereby petitions the Commission pursuant to Section 10 of the Communications Act of 1934, as amended (the "Act"),¹ to forbear from the unbundling obligations of Section 251(c)(3) of the Act as they apply to ACS's Anchorage, Alaska local exchange carrier ("LEC") study area,² and the application of the related Section 252(d)(1) pricing standards for unbundled network elements ("UNEs")³ to the extent ACS chooses to continue to offer UNEs in Anchorage.⁴

I. INTRODUCTION AND SUMMARY

ACS is the incumbent local exchange carrier ("ILEC") in the Anchorage, Alaska study area, which is among the most competitive telecommunications markets in the country. Since the enactment of the Telecommunications Act of 1996, ACS's local exchange market share in Anchorage has fallen from nearly 100 percent to less than 50 percent. ACS's chief

¹ 47 U.S.C. § 160.

² Map of Anchorage Study Area, attached hereto as Exhibit C.

³ If the Commission finds that forbearance from the unbundling requirements of Section 251(c)(3) is warranted, then the Section 252(d)(1) pricing standards for UNEs would be inapplicable. ACS also incorporates by reference the UNE requirements set forth in Section 51.319 of the Commission's rules, and all other regulations giving carriers rights to UNEs at regulated rates, adopted pursuant to Sections 251(c)(3) and 252(d)(1) of the Act.

⁴ As used herein, when ACS refers to "Anchorage" it is referring to the entire Anchorage study area, which includes some areas beyond the political boundaries of Anchorage.

competitor is General Communication, Inc. ("GCI"), which currently provides local exchange and exchange access service to approximately 49 percent of the Anchorage local exchange market and is capable of providing local exchange and exchange access service over its own facilities by cable, fiber or copper to nearly all of Anchorage.⁵ GCI is the largest broadband provider in Alaska, the monopoly cable system operator in Anchorage, and one of two predominant long-distance carriers in the state (along with AT&T Alascom).⁶ GCI provides local exchange and exchange access service substantially over its own switched access facilities and has announced plans to convert the entirety of its local exchange service customer base to its own facilities, including its cable plant, which passes nearly every residence and business in Anchorage.⁷ GCI's statements make clear that the time frame for moving its customers onto its own facilities is entirely dependent upon the difference in the cost of deploying cable telephony and the below-cost UNE loop rate. There are no barriers to entry in the market.

Though Anchorage enjoys robust facilities-based competition, GCI is the only CLEC that operates using a UNE-based strategy, and at this time, is the only party purchasing

⁵ *In the Matter of Petition by GCI Communications Corp. d/b/a General Communication Inc. and GCI for Arbitration Under Section 252 of the Telecommunications Act of 1996 with the Municipality of Anchorage d/b/a ATU Telecommunications a/k/a ATU Telecommunications for the Purpose of Instituting Local Competition*, RCA Docket No. U-96-89, Prefiled Rebuttal Testimony of Dana Tindall on Behalf of General Communication, Inc. at 5 (filed with the RCA Sept. 29, 2003), attached hereto as Exhibit J ("*Tindall Prefiled Rebuttal Testimony*") (stating that GCI's cable telephony will pass 98% of homes in Anchorage). See also, *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the FCC's Triennial Review Order on Interconnection Provisions and Policies*, Response of GCI to RCA Order Requesting Data, RCA Docket No. R-03-07(1), at 7, 8, Exhibit GCI-7, Exhibit GCI-8 (Mar. 19, 2004), attached hereto as Exhibit I ("*GCI Data Response*") (demonstrating that GCI has extensive fiber facilities throughout Anchorage).

⁶ Statement of Thomas R. Meade on Behalf of ACS, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area* at ¶ 6, attached hereto as Exhibit A ("Meade Statement").

⁷ GCI Q2 2004 Earnings Call Transcript at 4, 11 (July 28, 2004), attached hereto as Exhibit F.

UNEs affected by this petition for forbearance.⁸ As ACS has stated publicly, ACS does not intend to stop offering GCI access to UNEs.⁹ If the Commission grants the forbearance requested in this petition, ACS has ample incentive to continue offering network elements to GCI on negotiated, market-based terms in order to maintain the revenue stream.¹⁰ Other competitors have entered the market via resale and ACS does not seek forbearance from its obligations to resellers under the Act.

As the sole purchaser of UNEs in Anchorage, GCI already has demonstrated that it is not impaired without access to UNEs. GCI testified in the Anchorage UNE arbitration hearing that if the Regulatory Commission of Alaska ("RCA") allowed the UNE loop rate to increase, GCI would increase the pace of its facilities deployment.¹¹ And, in fact, after the RCA increased the UNE loop rate in 2004, GCI accelerated its transition from the ACS UNE loops to its own switched cable telephony plant.¹² Thus, GCI has shown that it is not impaired without access to UNEs, and that it will continue to compete with ACS by building out its own facilities.

As indicated above, forbearance from Sections 251(c)(3) and 252(d)(1) of the Act is warranted in the ACS Anchorage study area for local exchange and exchange access because all of the statutory requirements for forbearance pursuant to Section 10 of the Act have been met

⁸ ACS has interconnection agreements with other carriers that provide for the sale of UNEs; however, none of these carriers have ever purchased UNEs.

⁹ See Comments of ACS of Anchorage, Inc., *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of ILECs*, WC Docket No. 04-313, CC Docket No. 01-338, at 2-3 (Oct. 4, 2004) ("ACS Remand Comments").

¹⁰ *Id.*

¹¹ *Tindall Prefiled Rebuttal Testimony* at 3.

¹² GCI Form 10-K (Dec. 31, 2004), at 78; GCI Q2 2004 Earnings Call Transcript at 11; *see also*, Statement of David C. Blessing in Support of ACS, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Anchorage LEC Study Area*, at 15-16, attached hereto as Exhibit E ("Blessing Statement").

and mandatory unbundling is no longer necessary. Competitive market forces in Anchorage will ensure that ACS's retail rates and practices remain just, reasonable and nondiscriminatory and that consumers will be protected. Moreover, market forces will offer all carriers in Anchorage more efficient incentives to invest in facilities, thereby allowing carriers to provide consumers with better services and lower rates

In the alternative, however, if the Commission cannot find that Section 251(c)(3) is fully implemented in the Anchorage market, ACS requests that forbearance be granted with respect to GCI. Because GCI and ACS are each able to provide UNEs to their own customers, neither party should have the obligation to provide access to UNEs under Section 251(c)(3) to each other. Due to the competitive market forces that exist in Anchorage, each carrier will have incentives to negotiate reasonable terms of access to their respective networks.

II. SUBSTANTIAL COMPETITION EXISTS IN THE ANCHORAGE LOCAL EXCHANGE MARKET

Anchorage, Alaska is by most measures among the most competitive local telecommunications market in the country. As one Regulatory Commission of Alaska ("RCA") commissioner remarked, "Anchorage's level of competition in the retail local telephone market exceeds that of every other city in the Lower 48 [states] by nearly 20 points."¹³ The competition in this market is mature; even two years ago, GCI stated that ACS had only approximately 50% market share and was "arguably no longer dominant."¹⁴ While ACS continues to be regulated as

¹³ *Investigation of the Local Exchange Revenue-Requirement, Depreciation, Cost-of-Service, Rate Design Studies, and Tariff Rate Revisions Designated as TA429-120, TA431-120, and TA457-120 Filed by ACS of Anchorage, Inc., Order Granting Reconsideration, in Part; Granting Confidentiality; Making Rates Interim But Not Refundable; Subsuming Issues Into Docket U-01-34, Amending Docket Title; Affirming Electronic Ruling Extending Filing Deadline; and Closing Docket U-09-99, U-01-34(27), Dissenting Statement of Commissioner Kate Giard at 1 (Reg. Comm. of Alaska, Dec. 8, 2003).*

¹⁴ *Tindall Prefiled Rebuttal Testimony at 9.*

a dominant local exchange carrier, it currently has interim non-dominant status for intrastate tariffing purposes. Further, the RCA has recently adopted deregulatory measures for most local services in Anchorage based on the high level of competition that exists in that market, and effective in September 2005, ACS will be treated as nondominant in Anchorage with respect to most retail local exchange services.¹⁵

Market conditions in Anchorage are uniquely oriented to facilities-based competition. According to former FCC Chief Economist, Howard Shelanski, “[f]rom any economic or common-sense perspective, [competition in] the Anchorage local exchange market is a success story.”¹⁶ ACS faces competition from several carriers in the Anchorage local exchange services market, including GCI, AT&T Alascom, TelAlaska and several wireless carriers. ACS currently has interconnection agreements with the following LECs in Anchorage: AT&T Alascom, GCI, and TelAlaska, ACS Wireless and Dobson Cellular, the largest independent wireless provider in Alaska.¹⁷ ACS’s primary competitor, GCI, already has gained approximately 49 percent of the market and serves many of its customers over its own

¹⁵ *In the Matter of Commission Review of Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies and Competition in Telecommunications*, Order Adopting Regulations, RCA Docket No. R-03-03 at 18 (June 22, 2005) (available at http://www.state.ak.us/rca/orders/regs/2003/r03003_14.pdf) (In non-rural markets, such as Anchorage, an ILEC will be treated as nondominant if its market share is 60% or less or if an unaffiliated CLEC-ETC holds 20% or more market share).

¹⁶ Statement of Dr. Howard Shelanski in Support of ACS, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, at ¶ 26, attached hereto as Exhibit D (“Shelanski Statement”). “GCI has been so successful that *two years ago* its own senior management was already saying that the incumbent, ACS, ‘is arguably no longer dominant.’ Two years later, as GCI has continued to take market share while at the same time reducing its need even for UNE loops, ACS is clearly no longer dominant and GCI just as clearly remains unimpaired in providing local exchange service in the Anchorage Study Area.” *Id.* (citing *Tindall Prefiled Rebuttal Testimony* at 9).

¹⁷ See Meade Statement at ¶ 4.

facilities.¹⁸ Thus, a substantial number of the customers ACS has lost in Anchorage are now served over GCI's facilities, not over UNEs. In addition to this facilities-based competition from a switched local exchange service provider, intermodal competition from wireless and VoIP providers continues to grow in the market. Further, other CLECs in the market provide local exchange services using resale of ACS's services. Due to the vitality of competition in Anchorage, ACS has an annual line loss rate of approximately 8% per year, on average over the last five years.¹⁹ ACS has lost approximately 52% of its retail access lines through 2004,²⁰ significantly higher than the overall ILEC access line loss of 18.5% for the same period.²¹

A. Significant Facilities-Based Competition Exists in Anchorage

1. GCI Has as Much "Market Power" in Anchorage as ACS

ACS's primary competitor in Anchorage is GCI, which is well known in Alaska markets as the dominant incumbent cable television system operator and cable modem service provider. GCI also controls roughly half of the long-distance market in the state.²² GCI owns two of the three major undersea cables that link Alaska to the lower 48 United States and extensive fiber facilities throughout the state of Alaska, including fiber to the premises for many customers.²³ Bolstered by its name recognition and financial resources garnered as the incumbent cable television provider and aggressive long-distance carrier throughout most of Alaska, GCI entered the Anchorage local exchange market in 1997, and quickly gained a

¹⁸ See Meade Statement at ¶¶ 9, 14.

¹⁹ *Id.* at 8.

²⁰ *Id.*

²¹ See Local Telephone Competition: Status as of December 31, 2004, Industry Analysis and Technology Division, Wireline Competition Bureau Study, at Table 1 (rel. July 8, 2005).

²² See Meade Statement at ¶ 6; Comments of ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc., filed in RCA Docket No. R-03-07, at 4-5 (Jan. 12, 2004) ("ACS RCA Comments").

²³ See Meade Statement at ¶ 6; *see also*, ACS RCA Comments at 3.

significant share of both residential and business customers.²⁴ Only three years after GCI entered the local exchange market, the Commission found that ACS's predecessor, ATU Telecommunications, faced substantial competition in the Anchorage exchange access market, warranting a limited grant of pricing flexibility (the first of its kind for a rate-of-return carrier) for interstate access service.²⁵

Since entering the Anchorage local exchange market, GCI has gained a market share of approximately 49 percent. ACS and GCI agree on the relative percentage of retail access lines served by each company in Anchorage. For example, as of January 2004, GCI reported serving 87,327 lines out of approximately 190,424 lines in Anchorage.²⁶ As of June 2005, ACS estimates based on retail line information provided to the RCA for intrastate access purposes, that GCI is serving 88,000 lines out of 182,000 lines in Anchorage.²⁷ This includes 51,000 lines provisioned using UNE loops and 6,000 lines provisioned via resale under Section 251(c)(4) of the Communications Act.²⁸ ACS estimates that GCI serves an additional 32,000

²⁴ GCI is a very substantial company with the resources and experience to continue and augment its success to date, and is a considerably bigger company than Alaska Communications Systems Group, Inc. ("ACS Group"). GCI reported 2004 revenues of \$424.8 million (*see* GCI Form 10-K (Dec. 31, 2004), at 114), while ACS had 2004 revenues of \$320 million (*see* ACS Group Form 10-K (Dec. 31, 2004)).

²⁵ *ATU Telecommunications Request for Waiver of Sections 69.106(b) and 69.124(b)(1) of the Commission's Rules*, CPD 98-40, Order, FCC 00-379 (2000).

²⁶ *GCI Data Response*, filed in RCA Docket No. R-03-07, at 1 (Mar. 19, 2004). Because GCI does not need to report market share information, ACS has no way of knowing GCI's exact market share, or where its customers and facilities are located. ACS estimated GCI's market share as of January 2004 as 87,000 retail lines out of approximately 190,000 total lines in Anchorage. Meade Statement at ¶ 15. Thus, ACS's estimates compare reasonably to GCI's stated market share.

²⁷ Meade Statement at ¶ 5. See explanation of estimates, *infra*, Section II(A)(2)(c). GCI has estimated that in Alaska, residential customers represent approximately 61 percent of its lines and business customers represent approximately 36 percent of its lines. ACS believes that this breakdown is consistent with GCI's residential/business allocation in Anchorage.

²⁸ Meade Statement at ¶ 9.

lines over its own fiber, cable facilities and multiplexing of ACS loops.²⁹ Based on GCI's public statements, 12,800 of these lines are cable loops.³⁰ Thus, GCI serves approximately a third of its retail lines in Anchorage over its own facilities or its own multiplexing.³¹

According to GCI, "some of its customers are served entirely over GCI's own loops (for example, about 22 buildings in Anchorage are served from GCI's fiber ring)."³² Since GCI made this statement, ACS is aware of several new office buildings that GCI serves using its fiber ring.³³ GCI provided lists to the RCA of all its transport facilities and end points to all high capacity loops and dark fiber loops in Anchorage which show that GCI has fiber throughout Anchorage and can provision transport services to other competitors.³⁴ GCI has served customers over its own fiber network even before GCI deployed its cable telephony.³⁵ Others first were served by GCI via UNEs and are being moved to GCI's switched telephony cable plant.³⁶ GCI has made clear that the rate at which GCI transitions its UNE loops to its own cable telephony network is entirely dependent upon the cost of leasing ACS's UNEs.³⁷

²⁹ *Id.*

³⁰ GCI Q2 2005 Earnings Call Transcript at 2, 5 (Aug. 4, 2005), attached hereto as Exhibit F.

³¹ ACS cannot calculate exact figures because it does not know the extent to which GCI multiplexes its UNE loops.

³² Letter to William Maher, Chief, Wireline Competition Bureau, FCC, from Frederick W. Hitz, III, Director, Rates and Tariffs of GCI, Docket Nos. 01-338, 96-98, 98-147 (Nov. 21, 2002).

³³ Statement of Michael Bowman on Behalf of ACS, *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, at ¶ 6, attached hereto as Exhibit B ("Bowman Statement").

³⁴ See *GCI Data Response* at 7, 8, Exhibit GCI-7, Exhibit GCI-8.

³⁵ ACS estimates that GCI has reported that it served 19,000 customers entirely over its own facilities or by multiplexing ACS loops before GCI began migrating its customers to its cable telephony platform. Meade Statement at ¶ 15.

³⁶ See e.g., GCI Q2 2005 Earnings Call Transcript at 10 (Aug. 4, 2005).

³⁷ See GCI Q2 2004 Earnings Call Transcript at 11 (July 28, 2004) (statement of Ron Duncan). This has long been GCI's position. During the RCA's Anchorage UNE rate hearings, a GCI official stated that

GCI provides fully switched telephony over its own circuit-switched network, using a class 5 switch, unlike typical Internet-based cable telephony,³⁸ and has touted its cable telephony technology as equal to or better than ACS's switching network.³⁹ GCI is not content to serve only urban areas but is proceeding to offer telephony everywhere its cable plant reaches. GCI has applied to the RCA to provide competitive local service to eleven new service areas in Alaska, include several rural markets.⁴⁰ According to the CEO, "[GCI] expect[s] to provide competitive service to 90% of the phones in the State and I think you should assume that we'll be [sic] something close to half the market."⁴¹

GCI will soon complete its transition to cable telephony and plans to serve almost all of its telephone customers over its cable network.⁴² As described by Economist David Blessing, numerous news articles have recently discussed the effectiveness of cable companies,

GCI would not proceed with its plans to use its own facilities if the RCA adopted GCI's proposed UNE loop rate of \$7. *See Petition of GCI for Arbitration Under Section 252 of the Communications Act of 1996 with the Municipality of Anchorage a/k/a ATU Telecommunications for the Purpose of Instituting Local Exchange Competition*, RCA Docket No. U-96-89, Testimony of Dana Tindall on Behalf of GCI, Before the Regulatory Commission of Alaska, Public Hearing, Volume X at 850 (Nov. 6, 2003) (cited and included in Comments of ACS, *In the Matter of Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173 (filed Dec. 16, 2003)).

³⁸ Bowman Statement at ¶ 12.

³⁹ According to the Chief Executive Officer of GCI, "when [customers] convert to DLPS [digital local phone service], they are getting a superior quality service. It converts from an analog loop to a digital loop." GCI Q3 2004 Earnings Call Transcript at 15 (Nov. 4, 2004), attached hereto as Exhibit F (statement of Ron Duncan).

⁴⁰ *See Application by GCI Communication Corp. For an Amendment to its Certificate of Public Convenience and Necessity to Operate as a Competitive Local Exchange Telecommunications Carrier*, RCA Docket No. U-05-004 (filed Jan. 21, 2005). *See also*, GCI Form 10-Q (Mar. 31, 2005), at 32-33. The eleven new service areas include the communities of Ketchikan, Cordova, Chitina, Glenallen, McCarthy, Mentasta, Tatitlek, Valdez, Delta Junction, Homer, Kenai, Kodiak, Soldotna, Nenana, North Pole, the area from Eagle River to Healy, Wrangell, Petersburg, Sitka, Seward, Bethel, and Nome.

⁴¹ GCI Q4 2004 Earnings Call Transcript at 11 (Feb. 24, 2005), attached hereto as Exhibit F (statement of Ron Duncan).

⁴² *See Tindall Prefiled Rebuttal Testimony* at 5; *GCI Data Response* at Exhibit GCI-6.

such as GCI, in providing and quickly becoming dominant in competing local telecommunications services using cable television facilities.⁴³ Moreover, as described more fully below, GCI serves a subset of its customers over exclusive facilities over which it is not required to give ACS or its other competitors access.⁴⁴

2. Competitive Carriers in Anchorage Have Facilities that Duplicate ACS's Network

Competitive facilities are prevalent in the Anchorage study area. The Chair of the RCA has identified Anchorage as a "mature competitive market[]," in which there is emerging facilities-based competition.⁴⁵ The facilities of GCI and other carriers in Anchorage largely duplicate ACS's network elements: switching, interoffice transport, mass market loops, digital subscriber line ("DSL"), high capacity loops and dark fiber.

a. Switching

The Commission defines local circuit switching to include facilities that have the capability of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks. The switching UNE, which is being phased out nationwide due to the Commission's finding of no impairment,⁴⁶ also includes capabilities available to the ILEC's customers, including telephone number, directory listing, dial tone, signaling and access to 911.⁴⁷ GCI has its own DMS 100 switches in Anchorage, is collocated in all five of ACS's central offices and in two locations

⁴³ Blessing Statement at 6, Exhibit DCB-2.

⁴⁴ See Section II(A)(2)(c), *infra*.

⁴⁵ Transcript of RCA Public Meeting, Volume I, Presentation of Chairman Kate Giard, R-03-03 (March 30, 2005). In assessing GCI's application to amend its local certificates to provide local telephone service in 11 additional areas of Alaska, Chairman Giard identified approximately 141,000 lines out of 180,000 lines that will be subject to competitive pressure with the GCI application to offer facilities-based competition. *Id.*

⁴⁶ Triennial Review Remand Order at ¶ 5.

⁴⁷ Triennial Review Order at ¶ 433.

where ACS has placed remote switches.⁴⁸ GCI already provides all of its services in Anchorage with its own switch.⁴⁹ Due to the extensive nature of GCI's switching, GCI has never ordered a switching UNE from ACS in Anchorage.⁵⁰

b. **Dedicated Transport**

Dedicated transport, for purposes of Section 251(c)(3), are those transmission facilities dedicated to a particular customer or competitive carrier that it uses for transmission among ILEC central offices and tandem offices.⁵¹ GCI provides its own transport throughout the Anchorage study area over its extensive fiber network, including transport between its facilities collocated with ACS's facilities.⁵² GCI does not order transport from ACS.⁵³ GCI has the ability to connect either directly or indirectly between any two ACS central offices and between ACS switches and wire centers and GCI's switch, through facilities GCI owns, controls, leases, or otherwise has obtained the right to use, from an entity other than ACS.⁵⁴ GCI also has submarine cable landing at Whittier, Alaska and long-haul fiber optic cable facilities that, with a spur to Juneau, extends to Anchorage, Valdez, and along the pipeline route to Fairbanks.

⁴⁸ Bowman Statement at ¶¶ 3, 4; *see also*, GCI Data Response, Exhibit Anchorage Serving Areas.

⁴⁹ *The Future of Universal Service: Hearing Before The Communications Subcommittee of the Senate Committee on Commerce, Science and Transportation* (April 2, 2003) (testimony of Dana Tindall, Sr. Vice President, Legal, Regulatory & Gov't Affairs, General Communication, Inc.), LEXIS Nexis Library, FNS File ("Tindall Senate Testimony"). GCI's fiber ring now serves more than 22 office buildings in Anchorage.

⁵⁰ Bowman Statement at ¶ 5.

⁵¹ *Triennial Review Order* at ¶ 361. The Commission defines dedicated transport as ILEC "transmission facilities including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by the incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers." 47 C.F.R. § 51.319(d)(1)(i).

⁵² *See* Bowman Statement at ¶¶ 6, 7, 11.

⁵³ *See* Meade Statement at ¶ 15.

⁵⁴ ACS's Reply Comments, filed in RCA Docket No. R-03-07, at 31 (Apr. 2, 2004) ("ACS RCA Reply").

c. **Mass Market Loops**

The core of this petition is UNE loop relief for the Anchorage market. Although ACS seeks relief from all of Section 251(c)(3) and the related pricing provisions of Section 252(d)(1), it is fundamentally loop unbundling that is affected by this petition. ACS estimates that there are 182,000 retail access lines in Anchorage. They are all DS-1, DS-0 or mass market copper loops.⁵⁵ Because the Anchorage LEC market is small, the distinction between mass market and enterprise loops is irrelevant. ACS estimates that GCI serves 51,000 customers today over UNE loops,⁵⁶ and is moving roughly 6,000 customers per quarter off ACS's loops to its own plant.

By ACS's estimates for 2005, competitors in Anchorage provide wireline service through the following means: 11,000 lines are provisioned via resale under Section 251(c)(4) and 51,000 are provisioned using UNE loops.⁵⁷ In addition, ACS estimates that GCI serves an additional 32,000 lines on its own facilities or by multiplexing ACS loops.⁵⁸ ACS believes that local exchange services provided by CLECs are evenly distributed throughout the Anchorage study area.⁵⁹ Further, GCI provided lists to the RCA of all its transport facilities and end points to all high-capacity loops and dark fiber loops in Anchorage, which show that GCI has fiber throughout Anchorage and can provision these services to other competitors.⁶⁰

⁵⁵ Meade Statement at ¶ 5; Bowman Statement at ¶ 10.

⁵⁶ Meade Statement at ¶ 14.

⁵⁷ Meade Statement at ¶ 9. GCI has estimated that in Alaska, residential customers represent approximately 61 percent of its lines and business customers represent approximately 36% of its lines. ACS believes that this breakdown is consistent with GCI's residential/business allocation in Anchorage. GCI Q2 2005 Earnings Call Transcript at 3.

⁵⁸ Meade Statement at ¶ 14. GCI may serve some customers over multiplexed lines, however, ACS has no way to know to the extent to which GCI multiplexes its UNE loops.

⁵⁹ *See id.* at ¶ 3.

⁶⁰ *GCI Data Response* at 7, 8, Exhibit GCI-7, Exhibit GCI-8.

ACS estimates the number of GCI's retail lines based on Carrier and Area Specific Bulk Bill ("CASBB") data reported to the RCA for intrastate access purposes and on GCI's public statements. The CASBB report provides the total number of facilities-based lines served by GCI.⁶¹ Of these lines, ACS knows the number of UNE loops used by GCI, and subtracts this number from the total number of lines GCI reports to the RCA in order to calculate the total lines that are served on GCI's own facilities or derives by multiplexing ACS UNE loops.⁶² ACS estimates the breakdown of the lines served on GCI's own facilities between fiber and cable telephony based on GCI's public statement that, as of the end of the second quarter of 2005, about 12,800 lines have been moved off of UNEs and onto its cable telephony platform, and that by the end of 2005, a total of more than 25,000 lines will be transitioned.⁶³

Although GCI continues to purchase some UNE loops from ACS, GCI has substantial loop facilities of its own in the Anchorage study area.⁶⁴ GCI serves a subset of its customers over exclusive facilities over which it is not required to give ACS or its other competitors access. In Anchorage, ACS is aware of several subdivisions on Elmendorf Air Force Base and two commercial office buildings in which *only* GCI has loop facilities.⁶⁵ As a CLEC, GCI is not required to give competitors access to its facilities on an unbundled basis or at

⁶¹ Meade Statement at ¶ 12.

⁶² The number of lines that GCI reports to the RCA may represent multiple GCI customers that are served over a single ACS UNE loop.

⁶³ GCI Q2 2005 Earnings Call Transcript at 2, 5 (statement of Ron Duncan, "We are maintaining the target of 25,000 by the end of the year.").

⁶⁴ See Bowman Statement at ¶ 8.

⁶⁵ *Id.*; See also Letter to William Maher, Chief, Wireline Competition Bureau, FCC, from Frederick W. Hitz, III, Director, Rates and Tariffs of GCI, Docket Nos. 01-338, 96-98, 98-147 (Nov. 21, 2002) ("*Hitz Letter*") ("In the Aurora Subdivision, Elmendorff Air Force Base, GCI has gone in to wire an area and has installed its own carrier equipment. In those areas, GCI installed GR-303 capability so that it would, in the future, have the technical ability to handle requests for unbundled loops that it might receive from other carriers.").

regulated rates. In fact, GCI has vehemently opposed ACS's request for unbundled loop reciprocity during the RCA's interconnection agreement negotiation proceedings.⁶⁶ ACS cannot reach these customers unless it builds its own loop facilities or obtains access from GCI through voluntary negotiations.⁶⁷ The benefit of competition has been that most Anchorage customers, business and residences, have a choice of facilities-based providers. The only Anchorage customers that are denied a choice are those that are being served exclusively by GCI's facilities.

Further, GCI forecasts that it will have about 30% of its Anchorage local customers on its own facilities by the end of 2005.⁶⁸ GCI's cable television plant passes nearly all of the households in Anchorage.⁶⁹ Thus, GCI already has a redundant, separate and ubiquitous last-mile telecommunications network in place in the Anchorage study area, and needs only to complete the migration of its customers from ACS's UNEs to GCI's cable network.

GCI has announced its plans to migrate virtually all of its telephone customers to its monopoly cable network over the next two years. It began with more than 8,000 customers in 2004.⁷⁰ GCI intends to accelerate this conversion over time, and according to this schedule, GCI will have migrated virtually all of its customers to its own network by the end of 2007. Given proper economic incentives, that schedule could be accelerated, and GCI could be entirely

⁶⁶ GCI Brief, Reciprocity: The Obligations Set Forth in Section 251(c) Do Not Apply to GCI, *In the Matter of Petition by GCI for Arbitration Under Section 252 of the Communications Act of 1996 with the Municipality of Anchorage for the Purpose of Instituting Local Competition*, RCA Docket No. U-96-89 (filed May 13, 2003), attached hereto as Exhibit K.

⁶⁷ Bowman Statement at ¶ 9.

⁶⁸ GCI Q2 2005 Earnings Call Transcript at 5 (confirming that GCI maintains a target of 25,000 retail lines on DLPS).

⁶⁹ See *Tindall Prefiled Rebuttal Testimony* at 5.

⁷⁰ GCI Q4 2004 Earnings Call Transcript at 3 (Feb. 24, 2005).

independently facilities-based, with no need for any ACS UNEs, by the time the Commission acts on this petition.⁷¹

Moreover, GCI has demonstrated that it is capable of deploying wireless local loops in areas where it does not have access to UNE loops. GCI has indicated to the RCA that it is providing service over wireless local loops in Anchorage and plans to use this technology in rural markets where UNE loops are unavailable to CLECs pursuant to the Section 251(f) rural exemption.⁷²

d. High-Capacity Loops and Dark Fiber

No CLEC has ever purchased DS-3 or dark fiber loops from ACS. In response to a data request by the RCA, GCI provided a list of end points for all high capacity loops and dark fiber loops in the Anchorage service area that GCI controls, and that could be available for the provision of service comparable to UNE DS-3 or dark fiber loop services.⁷³ GCI stated that it “is not currently aware of any limitations with respect to the identified facilities that would affect their use as a replacement for the incumbent’s unbundled network element DS-3 and/or dark fiber services, as available at each of the customer locations listed.”⁷⁴ Therefore, there is no question that any competitor would not be “impaired” in the absence of unbundled access to high-capacity or dark fiber loops.

⁷¹ GCI has stated that accelerating the transition is merely a business decision – a matter of money. GCI Q2 2004 Earnings Call Transcript (statement of Ron Duncan).

⁷² Letter from Jimmy Jackson, GCI, to RCA Commissioners, regarding *In the Matter of the Application by GCI for an Amendment to its Certificate of Public Convenience and Necessity To Operate as a Competitive Local Exchange Telecommunications Carrier*, RCA Docket No. U-05-004 (Aug. 23, 2005), attached hereto as Exhibit G (e-mail attachment describing GCI’s use of wireless local loop technology in Anchorage and markets for which GCI applies for certification); GCI Form 10-K (Dec. 31, 2004), at 78. *See also*, 47 U.S.C. § 251(f)(1)(A).

⁷³ *GCI Data Response* at 8.

⁷⁴ *Id.*